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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(SAN JOSE DIVISION)

JOSEPH CIAMPI

Plaintiff,

v.

CITY OF PALO ALTO, a government
entity; LYNNE JOHNSON, an individual;
CHIEF DENNIS BURNS, an individual;
OFFICER KELLY BURGER, an
individual; OFFICER MANUEL
TEMORES, an individual; OFFICER
APRIL WAGNER, an individual; AGENT
DAN RYAN; SERGEANT NATASHA
POWERS, an individual.

Defendants.

Case No. C 09 02655 JF

**ADMINISTRATIVE MOTION FOR
ORDER PERMITTING PIERCE &
SHEARER, LLP TO WITHDRAW AS
COUNSEL OF RECORD AND REQUEST
FOR CONTINUANCE OF TRIAL DATE
AND ALL RELATED DEADLINES**

[Civil L.R. 11-5]

[Civil L.R. 7-11]

Judge: The Honorable Judge Fogel

TO EACH PARTY AND THEIR COUNSEL OF RECORD:

YOU ARE HEREBY NOTIFIED THAT Counsel of record for Plaintiff Joseph Ciampi

("Ciampi), Pierce & Shearer, LLP ("Pierce & Shearer") moves the Court, pursuant to Civil L.R.

1 7-11, to be relieved as counsel under Civil L.R. 11-5 because: (1) per Rules of Professional
 2 Conduct 3-700(C)(1)(d), Ciampi's conduct renders it unreasonably difficult for Pierce & Shearer
 3 to carry out the employment effectively; and (2) per Rule 3-700(C)(6), Pierce & Shearer believes
 4 in good faith, in a proceeding before the tribunal, that the tribunal will find the existence of other
 5 good cause for withdrawal. To avoid prejudice to Mr. Ciampi, Pierce is Shearer is further
 6 requesting a continuance of the trial date and all other pretrial deadlines by at least six months.
 7

8 This application is based on this notice and memorandum of points and authorities, the
 9 declarations of Andrew F. Pierce and Stacy North filed with this application, the files and
 10 records in this action, the Proposed Order filed with this application, and any further evidence or
 11 argument that the Court may request, if necessary, at an *in camera* hearing.
 12

13 **I. Application for Order Permitting Withdrawal Per Civil L.R. 11-5**

14 Civil L.R. 11-5 provides, in part, "Counsel may not withdraw from an action until
 15 relieved by Court after written notice has been given reasonably in advance to the client and to
 16 all other parties who have appeared in the case." Civil L.R. 11-5(a).
 17

18 Pierce & Shearer notified for all defendants in this action of its intent to withdraw at
 19 attorney of record on April 1, 2010. (Declaration of Stacy North ("North Decl.") ¶ 18) Pierce &
 20 Shearer first notified Ciampi of its intent to withdraw as counsel of record on March 20, 2010.
 21 (Declaration of Stacy North ("North Decl.") ¶ 15) Pierce & Shearer has notified Ciampi of its
 22 intent to be relieved as Counsel of Record numerous times since then. (Id.)
 23

24 Rules of Professional Conduct 3-700(A)(2) provides: "A member shall not withdraw
 25 from employment until the member has taken reasonable steps to avoid reasonably foreseeable
 26 prejudice to the rights of the client, including giving due notice to the client, allowing time for
 27 employment of other counsel, complying with Rule 3-700(D), and complying with other
 28 applicable laws and rules." Pierce & Shearer has taken reasonable steps to avoid prejudice to the

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1 rights of Ciampi, including giving due notice and attempting to help Mr. Ciampi to obtain
2 alternate representation. (Id. ¶ 17)

3 The limitations on what Pierce & Shearer can disclose consistent with the attorney client
4 privilege preclude a detailed discussion of the factual basis for withdrawal. The duty of
5 confidentiality continues notwithstanding grounds for withdrawal from the case; therefore,
6 attorneys are bound to preserve client confidences even when seeking to be relieved as counsel.
7 See California Rules of Court 3.1362(c) [attorney's declaration in support of withdrawal motion
8 cannot compromise attorney-client confidentiality]; Rules of Professional Conduct 3-700(A)
9 [attorney withdrawal must not prejudice client; San Diego Bar Ass'n Form.Opn. 1990-2 [duty of
10 confidentiality applies to both mandatory and permissive withdrawal]. Withdrawal cannot be
11 denied where the trial court admits Counsel's good faith representations. *Aceves v. Sup.Ct.*
12 (1996) 51 Cal.App.4th 584, 596; see *Leveresen v. Sup.Ct. (People)* (1983) 34 Cal.3d 530, 539
13 ["Having accepted the good faith and honesty of (counsel's) statements on the subject, the court
14 was bound under the circumstances to rule that a conflict of interest had been sufficiently
15 established"]. If necessary, Pierce & Shearer will provide detailed, privileged information in an
16 *in camera* hearing.

17 Rule 3-700(C)(1)(d) authorizes withdrawal if the client "by other conduct renders it
18 unreasonably difficult for the member to carry out the employment effectively." Pierce &
19 Shearer diligently pursued this matter, including conducting extensive discovery, although the
20 discovery cutoff is more than 5 months away. (North Decl. ¶¶ 3-8) Pierce & Shearer has
21 retained an expert who Mr. Ciampi selected, and the firm has reviewed evidence with him in
22 great detail. (Pierce Decl. ¶ 6) Despite the efforts, Mr. Ciampi is unhappy with the
23 representation. (North Decl. ¶ 9; Declaration of Andrew F. Pierce ("Pierce Decl.") ¶¶ 3-8) In
24 addition, Mr. Ciampi refused to follow his attorneys' advice. (North Decl. ¶ 10, Pierce Decl. ¶¶
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3, 7) Mr. Ciampi also made numerous accusations against Pierce & Shearer. (Pierce Decl. ¶¶ 7-9) These accusations, as well as Ciampi's refusal to follow advice, have made it unreasonably difficult for Pierce & Shearer to carry out the employment effectively. (North Decl. ¶ 12) Accordingly, Pierce & Shearer is requesting to be relieved as Counsel pursuant to Rule 3-700(C)(6).

Pierce & Shearer is, alternatively, requesting to be relieved as Counsel pursuant to Rule 3-700(C)(6), which authorizes withdrawal if the "member believes in good faith, in a proceeding before a tribunal, that the tribunal will find the existence of other good cause for withdrawal." Here, other good cause exists. Mr. Ciampi is not interested in the opinions of the lawyers at Pierce & Shearer. He disagrees with the legal strategy, the assessment of evidence, the evaluation of responsible parties, and an evaluation of the strategies for trial and /or settlement. Pierce & Shearer believes in good faith that Ciampi's hostility toward the firm, among other things, provides good cause for withdrawal. (North Decl. ¶ 14) Thus, Pierce & Shearer is, alternatively, requesting to be relieved as Counsel pursuant to Rule 3-700(C)(6).

Mr. Ciampi will need additional time to obtain alternate counsel, and that counsel will need time to get up to speed. Mr. Ciampi indicated that he would like an additional six months. (North Decl. ¶ 20) Consequently, Pierce & Shearer is also requesting a continuation of the trial date and all corresponding deadlines by at least six-months to avoid prejudice to Mr. Ciampi.

Finally, Mr. Ciampi is scheduled to have surgery on April 28, 2010. He will need at least two weeks to recover. (North Decl. ¶ 21) Thus, Pierce & Shearer respectfully requests that, if a hearing is required, the Court set the hearing after May 12, 2010.

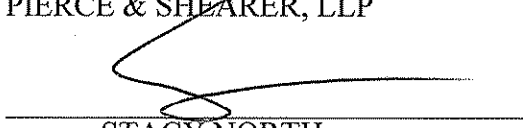
II. Conclusion

In light of the foregoing, Pierce & Shearer respectfully requests that this Court issue an Order relieving Pierce & Shearer as Counsel of Record for Ciampi in this action. Pierce &

1 Shearer further respectfully requests a continuation of the trial and all pretrial deadlines at least
2 six-months.

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4 PIERCE & SHEARER, LLP

5 Dated: April 14, 2010

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